

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE No. 1:25-cv-20010-PCH

MARIO MIRABAL,

Appellant,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY,

Appellee.

ANSWER BRIEF OF APPELLEE
DEUTSCHE BANK NATIONAL TRUST COMPANY

ON APPEAL FROM FINAL ORDER OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Bankruptcy Procedure 8012 and 8014, Deutsche Bank National Trust Company is a wholly owned subsidiary of Deutsche Bank Holdings, Inc., a corporation organized under the laws of the State of Delaware. Deutsche Bank Holdings, Inc. is a wholly owned subsidiary of Deutsche Bank Trust Corporation, a corporation organized under the laws of the State of New York. Deutsche Bank Trust Corporation is a wholly owned subsidiary of DB USA Corporation, a corporation organized under the laws of the State of Delaware. DB USA Corporation is a wholly owned subsidiary of Deutsche Bank AG, a banking corporation organized under the laws of the Federal Republic of Germany. No publicly held company owns 10% or more of Deutsche Bank AG's stock.

By: /s/ Ari Newman
Ari Newman

STATEMENT REGARDING ORAL ARGUMENT

Appellee Deutsche Bank National Trust Company believes this appeal presents neither a novel legal issue nor complex factual questions that would warrant oral argument. The bankruptcy court's orders fully address the legal bases for its rulings.

TABLE OF CONTENTS

	<u>Page</u>
CORPORATE DISCLOSURE STATEMENT	C-1
STATEMENT REGARDING ORAL ARGUMENT	C-2
TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION.....	1
STATEMENT OF THE ISSUES ON APPEAL	1
STATEMENT OF THE CASE AND FACTS	1
STANDARD OF REVIEW	3
SUMMARY OF ARGUMENT	4
ARGUMENT	4
I. Bankruptcy Court Properly Dismissed the Claim in the Adversary Proceeding for Lack of Standing to Challenge the Assignment of Mortgage.	4
II. Bankruptcy Court Properly Found No Cause to Retain Jurisdiction Over the Adversary Proceeding.	8
III. Purported Violations of Bankruptcy Stay Were Not Before the Court.....	9
CONCLUSION	10
CERTIFICATE OF SERVICE	11
CERTIFICATE OF COMPLIANCE	11

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Altier v. Fed. Nat'l Mortg. Ass'n</i> , No. 1:13-cv-164-MW/GRJ, 2013 WL 6388521 (N.D. Fla. Dec. 6, 2013)	5, 7, 8
<i>Bridge v. Aames Capital Corp.</i> , 2010 WL 3834059 (N.D. Ohio Sept. 29, 2010)	7
<i>Correia v. Deutsche Bank Nat'l Tr. Co.</i> , 452 B.R. 319 (B.A.P. 1st Cir. 2011).....	6
<i>Coursen v. JP Morgan Chase & Co.</i> , 2013 WL 5437341 (M.D. Fla. Sept. 27, 2013).....	6
<i>Coursen v. Shapiro & Fishman, GP</i> , 588 F. App'x 882 (11th Cir. 2014)	6
<i>Davis v. Mortg. Elec. Registration Sys., Inc.</i> , 2015 WL 4561547 (N.D. Ga. July 28, 2015)	7
<i>Deutsche Bank Nat'l Tr. Co. as Tr. under Pooling & Servicing Agreement Dated as of May 1, 2003 Morgan Stanley ABS Capital I Inc. Tr. 2003-NC5 v. Russell</i> , 343 So. 3d 649 (Fla. 1st DCA 2022)	8
<i>Harvey v. Deutsche Bank Nat'l Tr. Co.</i> , 69 So. 3d 300 (Fla. 4th DCA 2011).....	6
<i>Howell v. PHH Mortg. Corp.</i> , 2015 WL 5829673 (M.D. Fla. Oct. 1, 2015) reconsideration denied, 2015 WL 6750809 (M.D. Fla. Nov. 5, 2015)	5
<i>HSBC Bank USA, Nat'l Ass'n v. Buset</i> , 241 So. 3d 882 (Fla. 3d DCA 2018).....	8
<i>In re Westport Holdings Tampa, Ltd. P'ship</i> , 607 B.R. 715 (M.D. Fla. 2019).....	9

TABLE OF AUTHORITIES **(Continued)**

	<u>Page(s)</u>
<i>Lee v. Wiand</i> , 603 B.R. 161 (M.D. Fla. 2018).....	1, 3
<i>Stevens v. Deutsche Bank Nat’l Tr. Co.</i> , 2013 WL 12098770 (W.D. Tex. June 25, 2013), aff’d sub nom.....	7
<i>Stevens v. Deutsche Bank Nat’l Tr. Co.</i> , 570 F. App’x 402 (5th Cir. 2014)	7
<i>Vallely v. U.S. Bank, N.A.</i> , No. 2019-CA-88, 2020 Fla. Cir. LEXIS 840 (Fla. Cir. July 28, 2020)	6
 Statutes	
11 U.S.C. § 362(a)	8, 9
11 U.S.C. § 362(a)(1-8)	10

STATEMENT OF JURISDICTION

The district court functions as an appellate court in reviewing decisions of the bankruptcy court. *See Lee v. Wiand*, 603 B.R. 161, 168–69 (M.D. Fla. 2018).

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in dismissing the adversary complaint for lack of standing to challenge the Assignment of Mortgage.

STATEMENT OF THE CASE AND FACTS

On or about January 12, 2007, Ariana Birencwajg (“**Borrower**”) executed a Note in favor of IndyMac Bank, F.S.B. secured by a mortgage (the “**Mortgage**”) in favor of IndyMac Bank, F.S.B. that encumbered real property located at 563 West 49th Street, Miami Beach, Florida 33140 (the “**Property**”). [R:71]¹ The Loan Documents were subsequently assigned to DBNTC. [R:112]. Borrower ceased making payments on the Note, so DBNTC commenced a foreclosure action in Miami-Dade County, Florida, entitled *DBNTC, as Trustee v. Ariana Birencwajg and Mario Mirabal, et.al.*, Case Number 2018-CA-18704 (the “**State Court Foreclosure Action**”) to foreclose on the Mortgage. Mario Mirabal (“**Mirabal**”) was named as a party to the State Court Foreclosure Action as titleholder to the Property. [R:114-15].

¹ In this Answer Brief, the Record on Appeal [D.E. 5-2] will be cited as “R:___”.

In 2009, Borrower executed a quit claim deed to Mirabal relinquishing her ownership interests in the Property. [R:105]. DBNTC attempted to settle the matter but was unsuccessful. [R:36-49]. Thereafter, DBNTC resumed the State Court Foreclosure Action.

On April 5, 2023, the State Court granted Final Judgment in favor of DBNTC in the amount of \$1,179,057.78, plus statutory interest (the “**Final Judgment**”) against the Borrower and Mirabal.

After unsuccessfully attempting to stay the State Court Foreclosure Action, Mirabal filed for bankruptcy in the United States Bankruptcy Court for the Southern District of Florida on December 7, 2023, commencing Case No. 23-20131-CLC (the “**Bankruptcy Case**”). [D.E. 5-1]. The Bankruptcy Case was dismissed on November 21, 2024.

On October 24, 2024, Mirabal filed a Complaint against DBNTC (“**Complaint**”) in the Bankruptcy Case, commencing an adversary proceeding, Adv. No. 24-01418-CLC (the “**Adversary Proceeding**”). The Complaint sought to have the Bankruptcy Court stand in the shoes of the State Court to determine state law foreclosure issues, including whether DBNTC has standing to foreclose the Mortgage in State Court. [D.E. 5-1]. Specifically, Mirabal challenged the validity of the Assignments of Mortgage and asked the Bankruptcy Court to declare that

DBNTC lacked standing to foreclose the Mortgage at issue in the State Court Foreclosure Action. [R:24].

On November 21, 2024, DBNTC filed its Motion to Dismiss seeking dismissal of the Complaint because, among other pleading defects, Mirabal fundamentally lacked standing to challenge the Assignments of Mortgage and thus could not maintain any causes of action premised thereon. [R:70-84].

Mirabal filed a Response to the Motion to Dismiss attempting to justify his standing through “title to the property via a quitclaim Deed from the Borrower.” [R:94]. Mirabal was not (nor did he claim to be) a party to the Assignments of Mortgage he sought to invalidate through the Complaint.

On December 23, 2025, after hearing arguments on the matter, the Bankruptcy Court entered an Order granting the Motion to Dismiss and dismissing the Proceeding (the “**Order Granting Motion to Dismiss**”). [R:150-52]. The Order Granting Motion to Dismiss found Mirabal lacked standing to challenge the Assignments of Mortgage, as he was not a party thereto, and also found no cause to retain further jurisdiction over the Adversary Proceeding. [R:152].

STANDARD OF REVIEW

Legal conclusions of a bankruptcy court are reviewed de novo, and findings of fact are reviewed for clear error. *Wiand*, 603 B.R. at 168–69 (citing *In re Globe Mfg. Corp.*, 567 F.3d 1291, 1296 (11th Cir. 2009)). The burden of showing clear

error falls on the party seeking to overturn a bankruptcy court's finding. *Id.* (citing *In re Caribbean K Line, Ltd.*, 288 B.R. 908, 911 (S.D. Fla. 2002)).

SUMMARY OF ARGUMENT

Through the Complaint, Mirabal sought a declaration that DBNTC lacked standing to enforce the Mortgage that had been the subject of the State Court Foreclosure Action. [R:24]. Mirabal claimed that the Assignment of Mortgage was void because it was purportedly “robo-signed” and untimely executed in violation of the “PSA.” [R:19-21]. Each purported cause of action asserted by Mirabal rested and relied upon his challenge to the validity of that certain Assignments of Mortgage [R:31].

The Bankruptcy Court properly dismissed the Complaint because Mirabal lacked standing to challenge the Assignment of Mortgage as he was neither a party to nor beneficiary of the Assignments of Mortgage being disputed. The Bankruptcy Court declined to retain jurisdiction further as there remained no case or controversy between the parties as both the Bankruptcy Case and the State Foreclosure Action had been dismissed.

ARGUMENT

I. The Bankruptcy Court Properly Dismissed the Claim in the Adversary Proceeding for Lack of Standing to Challenge the Assignments of Mortgage.

The entire Complaint was premised upon Mirabal's theory that the Assignments of Mortgage were fraudulent. However, regardless of any claims of fraud (and DBNTC disputes the existence of any fraud), the Bankruptcy Court properly dismissed the claim because Mirabal lacked standing to challenge the Assignments of Mortgage in the first place.

Mirabal claimed the Assignment of Mortgage from IndyMac Bank, FSB MERS, Inc. (as Assignor) to DBNTC (as Assignee) dated June 18, 2010, was void because it was purportedly "robo-signed" and untimely executed in violation of the "PSA." [R:19]. *See also* Assignment of Mortgage [R:26]. From there, Mirabal claimed "questionable credibility" of the prior Assignment of Mortgage to IndyMac Bank, FSB (as Assignee) from original mortgagee MERS, Inc. (as Assignor) because the drafting attorney was later disbarred in 2013 on competency and ethical grounds. [R:21-22]. *See also* Assignment of Mortgage [R:31]. However, the Bankruptcy Court need not (and did not) address the merits of these allegations because Mirabal lacked standing to assert the challenge in the first place.

It is well-settled that non-parties/non-beneficiaries to an assignment of mortgage lack standing to challenge the validity of the assignment of mortgage. *See, e.g., Altier v. Fed. Nat'l Mortg. Ass'n*, No. 1:13-cv-164-MW/GRJ, 2013 WL 6388521, at *3 (N.D. Fla. Dec. 6, 2013) ("to the extent that plaintiffs challenge the validity of the Assignment either because plaintiffs allege MERS does not have the

authority to assign the Mortgage—or because the Assignment was executed by ‘robo-signers’—plaintiffs do not have standing to raise a challenge to the validity of an assignment because plaintiffs are not parties to the Assignment”); *Howell v. PHH Mortg. Corp.*, 2015 WL 5829673, at *3 (M.D. Fla. Oct. 1, 2015) reconsideration denied, 2015 WL 6750809 (M.D. Fla. Nov. 5, 2015) (“Plaintiffs do not have standing to raise a challenge to the validity of the assignments because Plaintiffs were not parties to those transfers.”); *Coursen v. JP Morgan Chase & Co.*, 2013 WL 5437341, at *11 (M.D. Fla. Sept. 27, 2013) (“[U]nder Florida law [the plaintiff] as a non-party to the assignment lacks standing to contest it.”) *aff’d sub nom*; *Coursen v. Shapiro & Fishman, GP*, 588 F. App’x 882 (11th Cir. 2014). Accordingly, Mirabal—as a non-party/non-beneficiary to the Assignments of Mortgage—lacks standing to challenge those documents.

Florida state courts have explained that the reason non-parties, like Mirabal, are not permitted to challenge assignments is because such disputes are *solely between the assignee and the assignor...not the borrower*. See *e.g.*, *Harvey v. Deutsche Bank Nat’l Tr. Co.*, 69 So. 3d 300, 304 (Fla. 4th DCA 2011) (disputes as to validity of assignment are between the assignee and assignor); *see also Vallely v. U.S. Bank, N.A.*, No. 2019-CA-88, 2020 Fla. Cir. LEXIS 840, at *5 (Fla. Cir. July 28, 2020) (Borrowers do not have standing to challenge the Assignment of Mortgage because they are not a party to that assignment). That is, even if an assignment was

fraudulent or faulty in some manner, it is a matter that can only be challenged by the parties to the instrument itself.

The lack of standing of a borrower (and anyone claiming thereunder) to challenge an assignment has been consistently upheld in other jurisdictions. *See, e.g., Correia v. Deutsche Bank Nat'l Tr. Co.*, 452 B.R. 319, 324 (B.A.P. 1st Cir. 2011) (if “[t]he Debtors cannot show they were a party to the contract,” they lack standing to challenge the assignment of their mortgage); *Stevens v. Deutsche Bank Nat'l Tr. Co.*, 2013 WL 12098770, at *7 (W.D. Tex. June 25, 2013) (“Defendants argue plaintiffs lack standing to challenge the Assignment, and the Court agrees.”), *aff'd* sub nom, *Stevens v. Deutsche Bank Nat'l Tr. Co.*, 570 F. App'x 402 (5th Cir. 2014); *Davis v. Mortg. Elec. Registration Sys., Inc.*, 2015 WL 4561547, at *8 (N.D. Ga. July 28, 2015); *Bridge v. Aames Capital Corp.*, 2010 WL 3834059, *5 (N.D. Ohio Sept. 29, 2010).

In this case, Mirabal raises the same arguments presented in *Altier*, namely, that an assignment executed by MERS or a robo-signer is invalid. [R:5-2, p. 19]. *See Altier*, 2013 WL 6388521 at *3. However, like *Altier*, Mirabal is not a named party to the Assignments of Mortgage nor is he a beneficiary to the Assignments of Mortgage. [R:5-2, p. 112].

Accordingly, the Bankruptcy Court correctly followed *Altier* and its progeny in finding that Mirabal lacked standing to challenge the Assignments of Mortgage because he was not a party to the instruments.

II. Bankruptcy Court Properly Found No Cause to Retain Jurisdiction Over the Adversary Proceeding.

The Bankruptcy Court declined to retain jurisdiction to consider any amendments to the Complaint because there no longer existed (and still no longer exists) a case or controversy. Mirabal's bankruptcy case was dismissed on November 21, 2024. And DBNTC's State Court Foreclosure Action was dismissed on December 3, 2024. [R:146-47].² As such, there was (and still is) no longer a case or controversy that placed Mirabal in need of immediate declaratory relief. "[I]f a declaratory judgment action fails to meet the Article III case and controversy requirement—including the requirement that the action be ripe for review—it must be dismissed for want of jurisdiction. *St. Paul Fire & Marine Ins. Co. v. Rosen Millennium, Inc.*, 337 F. Supp. 3d 1176, 1182 (M.D. Fla. 2018). While the declaratory judgment act is to be broadly construed, "there still must exist some

² Even if the foreclosure action was still pending, a declaratory claim based upon the validity of the Assignment of Mortgage would be *irrelevant* to the State Court Foreclosure Action. Mirabal incorrectly believed that if the Assignment of Mortgage was void or fraudulent, then DBNTC lacked standing to foreclose the Mortgage. Mirabal was incorrect in that conclusion because an assignment of mortgage is not determinative of the right to enforce a mortgage. See *HSBC Bank USA, Nat'l Ass'n v. Buset*, 241 So. 3d 882, 890-91 (Fla. 3d DCA 2018) (Assignments of mortgage are "superfluous" and "unnecessary" to entitlement to enforce a mortgage as Florida law has always held that the mortgage merely follows the note regardless of assignment.). Standing to foreclose is proven by demonstrating entitlement to enforce the Note (the Mortgage simply follows the Note as an incident to the debt). See *Deutsche Bank Nat'l Tr. Co. as Tr. under Pooling & Servicing Agreement Dated as of May 1, 2003 Morgan Stanley ABS Capital I Inc. Tr. 2003-NC5 v. Russell*, 343 So. 3d 649, 651 (Fla. 1st DCA 2022). Further analysis on this issue was unnecessary to the Bankruptcy Court as the State Court Foreclosure Action was dismissed.

justiciable controversy between adverse parties that needs to be resolved for a court to exercise its jurisdiction. Otherwise, any opinion ... would be advisory only and improperly considered in a declaratory action. *Martinez v. Scanlan*, 582 So. 2d 1167, 1171 (Fla. 1991). Mirabal failed to state a viable claim for declaratory relief and there remained no further case or controversy between the parties. As a result, the Bankruptcy Court properly found no basis on which to retain jurisdiction over the Adversary Proceeding.

III. Purported Violations of the Bankruptcy Stay Were Not Before the Court.

Mirabal further claims that DBNTC violated the Bankruptcy Code's automatic stay, 11 U.S.C. § 362(a), when it *allegedly* conveyed DBNTC's interest in the Property to a third-party. [IB, p. 2]. However, this issue was not before the Bankruptcy Court on DBNTC's Motion to Dismiss, it was not a part of the Bankruptcy Court's Order Granting the Motion to Dismiss, and thus has not been preserved on appeal. *In re Westport Holdings Tampa, Ltd. P'ship*, 607 B.R. 715 (M.D. Fla. 2019) (generally, bankruptcy litigants are not permitted to raise arguments for the first time on appeal).³

Even if the argument *had* been preserved, there was no record evidence that DBNTC conveyed anything at all. Instead, the record evidence shows that Mirabal's title to the Property was conveyed to a third-party on November 13, 2024 by a

³ While there are exceptions to this general rule, those exceptions do not apply for the reasons set forth here in § III.

Special Magistrate appointed under Case Number 2022-004706-CA-01, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida [R:139-40]. There is no record evidence that DBNTC was ever a party to or otherwise involved in that action or the transfer of Mirabal's interest in the Property.⁴

There is also nothing in 11 U.S.C. § 362(a) that would prevent DBNTC from conveying or transferring *its* interest in the Property. Section 362(a) of the Bankruptcy Code governs a *debtor's* interests by preventing any actions “*against the debtor,*” or creating/enforcing any *liens* on the Property that would necessarily impact the debtor's interest. *See* 11 U.S.C. § 362(a)(1-8). Mirabal failed to identify any conduct by DBNTC that was taken against Mirabal or his interests or that could plausibly be deemed to be a violation of the automatic stay. Accordingly, that claim also fails.

CONCLUSION

For the reasons set forth above, Deutsche Bank National Trust Company respectfully requests that this Court affirm the Order Granting Motion to Dismiss in all respects.

Dated: April 1, 2025

Respectfully submitted,

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⁴ *See KP Investments Miami, LLC's v Mario Mirabal*, Complaint for Ejectment [R:128-40].

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CERTIFICATE OF SERVICE

I certify that on April 1, 2025, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the below Service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing (via USPS and Registered e-mail).

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the typeface requirements set forth in Fed. R. Bankr. P. 8015(a)(5)(A) and (a)(7)(B)(i). This Brief was prepared in Microsoft Word 14-point Times New Roman type and contains 2,326 words.

/s/ Ari Newman
Ari Newman